Administrative Problems of Government Seizure in Labor Disputes

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How should the government cope with strikes in essential industries? Should the government allow the strike to run its course so that it may fulfill its function in the process of collective bargaining? In the emergency period prior to World War II, during the war, and in the postwar reconstruction period, the federal government under constitutional or statutory authority seized nearly sixty industrial plants or facilities because labor disputes interrupted or threatened to interrupt continuity of operation. Several states have also in peacetime seized public utilities where a strike might cripple the community by depriving it of services vital to public health and welfare. This article describes and analyzes federal experience with administrative problems in plant seizures.

Relations with Employers

Although it has been asserted that wide-scale commandeering of plants in World War I was deterred because of difficulties in operating complex industrial enterprises and the fear that executive talent could not be found to replace private management,[1] this problem proved negligible in World War II seizure experiences. The government made no change in management when seizure resulted from union recalcitrance. Most of the executive orders directing seizure specified that the incumbent management should be allowed to continue to function to the maximum extent possible. Even when actions on the part of management were the cause of seizure, it would be allowed to remain if cooperative with the federal manager.

In the few cases where management failed to cooperate with the government and changes were necessary, only the company president or a few top officers were displaced. In the case of the Air Associates, for example, the government forced the corporation's board of trustees to displace its president as a condition of returning the plant to private control.[2] The displaced president of the Toledo, Peoria, and Western Railroad asked the Interstate Commerce Commission for permission to borrow money to pay his salary, but the request was denied on the ground that the loan was not "necessary for the operation of the property in the service of the public as a common carrier"; also funds were not available to him to repay the notes.[3] So unyielding on the issue of retroactive wage payments was the management of the Twentieth Century Brass Works that the federal manager reduced the salaries of the three officers and later fired one of them.[4]

In industry-wide wartime seizures, the government obtained effective control of the many individual, independent units by appointing the private managers as federal managers (e.g. coal and railroads). In the railroad seizure of 1943, the War Department organized the railroads into regions, commissioned seven railroad presidents as colonels, and placed them in charge of regional headquarters. When the railroads were returned to private hands, the

[1] "Executive Commandeering of Strike-Bound Plants," 55 *Yale Law Journal* 289 (1941).

[2] *The New York Times*, Nov. 19, 1941.

[3] *Ibid.*, July 26, 1944.

[4] Memorandums for the Provost Marshal General, of December 9, 11, and 16, 1944, from Lt. Col. John S. Myers, chief, Emergency Protection Branch.

colonels became retired Army officers.[5] Private operators and managers of seized coal mines were enlisted as government employees but were not actually paid by government check.

The reconversion seizures present an almost uniform picture of no management displacement. In fact, that was a criticism of the 1946 railroad seizure by A. F. Whitney, President of the Brotherhood of Railroad Trainmen, who claimed that seizure was only a paper process—that the railroad owners were still the bosses and continued to realize the fruits of operation.[6] However, when the Fox Coal Company and the Carter Coal Company refused to pay a royalty into the miners' welfare fund, as provided by the Krug-Lewis agreement, the government dismissed the company's president and undertook active operation of the company.[7]

The government-owner relationship arrangements varied, depending upon who was recalcitrant and his degree of cooperation. In one of the first seizures involving management recalcitrance, that of the Federal Shipbuilding and Dry Dock Company, the government indicated that there were several alternatives open. The government could purchase the property outright or it could lease it from the original owner. If purchased, the government could either operate the plant as a government corporation or lease it to a private corporation.[8] In World War I a national governmental operating corporation had been set up to administer seized properties.

The president of the Federal Shipbuilding Company proposed that the government buy the company capital stock. The government declined this offer, however, and seized the property with no legal transfer of title.[9] The company remained a corporate entity and the naval officer in charge considered himself a trustee for the corporation as well as a representative of the government in the company's operation. Although the government was legally obliged to offer the company a fair compensation for the use of its properties, it was arranged that the government should have complete control of the facility; the private owners received the profits of operation and compensated the government for its management of the property. Neither side revealed the amount of compensation.[10]

The S. A. Woods Machine Company seizure, another early seizure (1942) involving management noncompliance, was unique in its government-owner relationship. The company refused to accept a decision of the War Labor Board and sought to lease its plants to the Army, but could not reach an agreement upon a fair compensation. After seizure the Army did not sign a contract with the company's certified bargaining agent because government departments do not enter into collective bargaining agreements with unions. The situation was further complicated by the fact that the company was producing not only for the Army but also for the Navy and for civilian consumption.

These factors led the Army to find a private management to take over the seized company. The Murray Company accepted the job and signed a collective bargaining contract with the union. The details of the contract between the Murray Company and the War Department were not made known but it was believed that any risk (profits or losses) would fall to the government.[11] At this time a U.S. District Court issued a condemnation decree for the Woods' properties giving the seizing agency control, but not title, until June 30, 1945. A later legal decision ordered the S. A. Woods' South Boston plant returned to its owners January 25, 1943, and awarded a judgment in favor of the company for the use of buildings, machinery, and equipment.[12]

Although the refusal of the management of the Atlantic Basin Iron Works to accept a WLB order ultimately resulted in seizure, the management was most cooperative with the seizing agency, the War Shipping Administration. An agreement was reached not to restrict

[5] *The New York Times,* Jan. 20, 1944.

[6] U.S. Congress, House, Committee on Education and Labor, *Amendments to the National Labor Relations Act,* Hearings, 80th Cong., 1st sess. on H.R. 8, H.R. 725, H.R. 880, H.R. 1095, and H.R. 1096 (U.S. Government Printing Office, 1947) III, 1545 ff.

[7] *The New York Times,* January 1, 1947.

[8] "Executive Commandeering of Strike-Bound Plants," *loc. cit.*

[9] *Business Week,* Aug. 30, 1941, p. 16; see also *The New York Times,* Aug. 26, 1941.

[10] *The New York Times,* Jan. 7, 1942.

[11] *Business Week,* Jan. 2, 1943, p. 17 ff.

[12] *The New York Times,* Jan. 26, 1943.

the company in the exercise of customary management functions, and the management passed resolutions authorizing its banks to make company funds available in the government operation.[13] Upon government relinquishment of the properties, the parties signed a mutual release from claims.

Another early World War II seizure, that of the Toledo, Peoria and Western Railroad Company, involved nonacceptance by management of a WLB decision. This seizure was the longest on record, from March, 1942, to October, 1945. The Executive order for the seizure made no mention of compensation to stockholders. In the three previous seizures, the stockholders had been allowed to receive the profits. The Fifth Amendment to the Constitution provides that private property shall not be taken for public use without just compensation, but the arrangement of allowing the stockholders the profits realized under government seizure had been assumed to be sufficient for settling the claims of the parties. A later Executive order[14] authorized the Office of Defense Transportation to use the net cash earnings in the discharge of lawful obligations during its administration of the T. P. & W. properties, but stipulated that dividend payments were not to be made during federal operation of the road.

Upon seizure, the ODT began keeping a set of books to reflect the company's finances during the period of government operation, a new procedure in the administration of seized properties. The profits earned during seizure were allowed to accumulate until a final settlement was made when the government relinquished control. Under final settlement terms the railroad received the profits earned under government seizure after deducting the federal tax liability during the control period.[15]

The federal manager of the T. P. & W. thus characterized the government-ownership relations:

> We will serve as sort of trustee or receiver . . . not dispossessing the present management. . . . This is no more of a "seizure" than when a receiver takes over a corporation.[16]

Usually in seizures occasioned by labor recalcitrance, and occasionally in cases of management recalcitrance, the government negotiated an operating agreement with management in which the company waived certain operating rights, agreed to finance the operation, and released the government from any claims arising out of seizure.[17]

In the coal mine and railroad seizures a modified plan was adopted. Although no government-management operating agreement was consummated, the companies continued normal operations as requested. In the 1943 coal seizure, mining operations continued to be for the account of the private owners.[18] The federal mine manager declared that the government had temporarily taken possession or custody of the mines and would operate them in a manner consistent with the fact that title did not pass to the government.[19] The Department of the Interior claimed to be custodian of the mines with no intention of nationalizing the industry.[20]

During the mine seizures no separate books were needed so long as all transactions occurring during that period were reflected. At the time of return the individual mine owner could either accept the mine return as fulfilling all claims against the government, or reserve the right to make claim for damage to his property by reason of government control; in case he refused to accept one of these courses the government would continue control until a detailed financial accounting of the control period was made.[21]

In some cases of management uncooperativeness and in the absence of a government-owner operating agreement, the seizing agency oper-

[13] Report of William Radner, general counsel to war shipping administrator, Oct. 2, 1943.

[14] Executive Order 9320, (March 24, 1942).

[15] ODT press release, July 28, 1947.

[16] *The New York Times,* Mar. 23, 1942.

[17] George C. Vietheer, "The Government Seizure Stratagem in Labor Disputes," 6 *Public Administration Review* 152 (1946).

[18] U.S. Department of the Interior, *Annual Report of the Secretary of the Interior for the Fiscal Year Ended June 30, 1944* (Postwar Frontiers Edition; U.S. Government Printing Office, 1945), 141.

[19] Secretary Ickes, Bulletin # 2, "Regulation for the Operation of Coal Mines under Government Control," reprinted in 48 *Coal Age* 115 (June, 1943).

[20] *The New York Times,* May 4, 1943.

[21] *Ibid.,* Aug. 4, 1943.

ated the plant or facility for the account of the United States. Government emergency funds were made available to supply working capital for such operation. In the Gaffney case the War Department had expert independent textile appraisers appraise the seized property to determine a fair market value and recommend fair compensation.[22]

A variation in government-owner operating agreements was developed when the War Department impounded receipts in the Air Associates seizure and caused financial embarrassment. Company operation was then financed by the government to the extent of 30 per cent of unfilled war contracts.

Government-owner agreements were usually made in seizure cases in the reconversion period. For example, agreements with the meat packing companies proposed

> . . . the operation of the plants and facilities of the company by the company with its own funds for its own account subject to the direction of the Government representative, such agreement containing a complete release of the Government for all claims of any kind or nature that might arise by reason of the Government taking possession of the plants or facilities or the operation thereof under Government possession.[23]

Whether seized properties were operated to the account of the private owners or to the account of the United States, the seizing agency needed funds for administrative expenses and/or operating capital because the seizing agency generally had no authority to use funds or receivables attributable to the pre-seizure period without company consent. Passage of the War Labor Disputes Act was interpreted as implying approval of the use of appropriated monies for the operation of seized plants.[24] The chief source of funds for the seizing agencies was the President's Emergency Fund and the amount allocated was always ample. The amount initially allocated for the 1943 coal seizure was $10,000,000; for the meat packing seizure, $7,000,000; and for the Great Lakes Towing Company seizure, $350,000. A large portion of each allocation was returned unused; for example, administrative expenses in the meat packing seizure were only $7,000.[25]

In the second Montgomery Ward seizure the operating problems of the War Department were almost insurmountable. The chief difficulty arose because only a small proportion of the retail stores and mail order houses were involved in labor disputes and were seized. Company regional warehouses served both seized and company-operated stores. If a government-seized warehouse filled an order placed by a company-operated store, the Army and the company had to do business with one another. The Army soon relinquished both the Chicago warehouse and mail order house, the central purchasing and distributing agencies for the retail units. Since the company, controlling most of the retail outlets, received the money from sales, there was large outgo and little income for the Army, which spent $1,200,000 more than it took in. This sum represented inventory purchased for which Montgomery Ward made reimbursement after deducting damages of $480,680 by reason of Army occupancy.[26]

A federal-state problem arose only when seized facilities were operated for the account of the United States, as happened in the case of a number of midwestern trucking companies. Seven midwestern states were aroused because the United States refused to pay certain "use" taxes levied by the states. The Office of Defense Transportation, operating these firms, was unable to show a profit; it indicated that perhaps it would pay the state levies if the operation of the truck lines showed a profit. Dissatisfied with this response, the states secured the adoption of an appropriation rider stipulating payment of all state levies on private truck lines seized.[27] Not only did the states object to loss of taxes; competing firms

[22] Letter, Nov. 30, 1945, from Brigadier General Thomas H. Green, Acting The Judge Advocate General, to the Deputy Commanding General, A.S.F.

[23] *Report of Government Representative Gayle G. Armstrong on Seizure of Plants and Facilities in the Meat Packing Industry under Executive Order No. 9685*, p. 3 (no date).

[24] Vietheer, *op. cit.*, 155.

[25] *Report of Government Representative Gayle G. Armstrong* . . . 12ff.

[26] *The New York Times*, Oct. 19, 1945.

[27] *Business Week*, Feb. 24, 1945, 43, 45; see also *Report of the Federal Manager of Motor Carrier Transportation Systems and Properties to the Director of O.D.T., Concerning Possession, Control or Arrangement for Operation of Systems and Properties of 103 Midwest Carriers August 11, 1944 to March 5, 1946*, 59-61 (no date).

pointed to the unfair competitive advantage of firms not having to pay taxes.

Twenty-one of the fifty wartime seizures were the result of employer noncompliance with WLB decisions. Seizure was used as a last resort after attempts at mediation failed. Executive Order No. 9370, of August 16, 1943, authorized certain enforcement methods short of seizure, such as the withholding by the economic stabilization director of government contracts or priorities. But because economic sanctions would impede the war effort (the reasoning in the Hughes Tool Company case[28]) and because government legal experts considered that sanctions were not authorized by the War Labor Disputes Act,[29] economic sanctions fell into disuse. Thus, seizure was the most effective method of securing compliance in management cases; although it did not always guarantee ultimate acceptance of the WLB order, it at least assured enforcement of the award during the period of government control.

Several seizures were the result of refusal on the part of management to accept the maintenance-of-membership formula that the WLB devised in response to union demands for security. In the Federal Shipbuilding case the Executive order directing Navy seizure noted the company's refusal to accept maintenance of membership as recommended by the National Defense Mediation Board but did not specifically direct enforcement of the recommendation. The Navy declared that it accepted the maintenance-of-membership award; but when the union asked the Navy to discharge eight workers no longer in good standing with the union, the Navy neglected to carry out the recommendation of the NDMB.[30]

Because of this failure to act and because the union had no contract which the Navy recognized, the union wanted the shipyard returned to the private owners. Since the United States had just declared war, the Navy desired to be freed from the responsibility of operating the shipyard.[31] Although no satisfactory union security formula was agreed upon, the Navy relinquished control, believing production would continue uninterruptedly because of the no-strike, no-lockout pledge made at the December, 1941, Labor-Management Conference.

In the S. A. Woods case the Executive order directed the seizing agency to enforce the WLB directive on maintenance of membership, the first time union workers were required to be in good standing as a condition of employment in a federally operated plant. In the Atlantic Basin Iron Works seizure, the representative of the War Shipping Administration was able to persuade the company president to sign a maintenance-of-membership contract with the union after he was allowed to insert a clause stating the contract was being signed under protest and reserving his right to ask appropriate authorities for review. Neither the union nor the WLB objected to this insertion.[32] But many maintenance-of-membership seizure cases remained unresolved upon relinquishment, indicating there was no effective sanction against an obdurate employer.

Failure of management to carry out wage increases ordered by the WLB was another cause of seizure. Jenkins Brothers claimed inability to pay a retroactive wage increase without a price increase which the OPA declared to be unnecessary, even though the company had earlier offered an increase without price relief. While pleading inability to pay the $250,000 retroactive award, the company paid a $400,000 year-end bonus.[33] To halt government operation of the plant the company sought an injunction, claiming irreparable damage as a result of a presidential order directing the retroactive wage payment. A U.S. District Court on April 27, 1944, denied the injunction, saying that the plaintiff had adequate and complete remedy at law in the Court of Claims.

Another injunction suit against a wage increase ordered by the WLB was brought by Employers Group of Motor Freight Carriers, representing 112 midwestern freight transport firms. A U.S. District Court of Appeals decided June 2, 1944, that WLB orders were not

[28] *The New York Times,* Sept, 7, 1944.

[29] Edwin E. Witte, "Wartime Handling of Labor Disputes," 25 *Harvard Business Review* 171 (Winter, 1947).

[30] *The New York Times,* Jan. 7, 1942.

[31] *Ibid.,* Jan. 2, 1942.

[32] Telegram of Sept. 16, 1943 from D. S. Bireley to Admiral E. S. Land.

[33] *War Labor Reports* (Washington, D.C.: The Bureau of National Affairs, Inc., 1942-), XIV, 255.

reviewable and that the seizure power of the President was independent of the board's order.[34] On August 11, 1944, the President then ordered the ODT to operate the motor carriers and to comply with the WLB wage increase order; however, the Executive order stipulated that wage increases which had accrued prior to the seizure were to be paid only out of net operating income. An operating order of the ODT permitted, but did not require, the payment of the retroactive wage increase and the union representative made no formal demand for an order requiring retroactive wage payments.[35]

For the majority of the 103 seized firms the possession was largely of a token nature. Failure to earn profit and continued need for federal funds forced the government to operate eight carriers for the account of the United States from November 1, 1944, to January 31, 1945. During the entire period of seizure $514,000 was advanced to twenty-eight carriers, of which $108,243 represented net operating losses.[35a] While the government helped to revise the chaotic rate structure by seeking a better correlation between particular rates, costs, and movements, the experience shows that a calculated risk of government seizure to enforce a wage award is the possibility of operational losses of marginal firms in a highly competitive industry.

In the Montgomery Ward case, the Executive seizure order directed payment of retroactive wage awards only out of the net operating income. Because the constitutionality of this seizure was challenged the government held the wage award in abeyance. After a favorable circuit court ruling the Army attempted to put the awards into effect, but the Army-controlled properties were unable to earn a profit and the awards could not be paid.[36] The Attorney General ruled that it would be improper to pay the retroactive wage award from appropriated funds such as the President's Emergency Fund.[37]

In the Montgomery Ward case high personnel turnover caused additional administrative difficulties, since about 70 per cent of the employees entitled to retroactive payments no longer were employed by the company. After nine and one-half months the War Department relinquished control, saying it did not feel further prolonged possession would change the company's disinclination to accept maintenance of membership and the retroactive wage award.[38]

The Great Lakes Towing Company seizure illustrates a wage award enforcement problem in the reconversion period. The President ordered the facilities to be operated on employment terms in effect at the time of seizure. The ODT then made a contract with the company for continued operation with company funds. As permitted by the War Labor Disputes Act, the union petitioned the National Wage Stabilization Board for a change in the terms of employment and received a wage increase award which the company refused to accept. Therefore the government-management operating agreement was terminated and the government began operating the company with funds advanced by the Bureau of the Budget. To meet the increased wage costs out of operating income the ODT applied for and received from the OPA authorization to impose a 20 per cent rate increase; this increase made it possible for the government to release the properties and return the capital lent by the Bureau of the Budget.[39]

Relations with Employees

BEFORE seizure of the North American Aviation Company it was planned to recruit workers through the U.S. Civil Service Comission if the strikers did not respond to a back-to-work plea. Collective bargaining was to be allowed at the seized property but strikes were to be forbidden.[40] This would be in accord with

[34] *In re. Employers Group of Motor Freight Carriers, Inc. v. National War Labor Board,* 143 F. (2d) 145 (1944).

[35] *Report of the Federal Manager of Motor Carrier Transportation Systems and Properties to the Director of O.D.T. Concerning . . . Midwest Carriers, August 11, 1944 to March 5, 1946,* p. 28 (no date).

[35a] *Ibid.,* pp. 21, 22, 72.

[36] *The New York Times,* Oct. 2, 1945.

[37] See fn. 22.

[38] Letter to Director of Economic Stabilization, William H. Davis, August 28, 1945.

[39] *Report of the Federal Manager of the Properties of the Great Lakes Towing Company to the Director of O.D.T.,* Washington, April 22, 1947.

[40] *The New York Times,* June 7, 1941.

the normal procedure in government Navy yards, shipyards, and arsenals.

Many complications in employee status developed when seized property was operated with government funds. In the Federal Shipbuilding and Dry Dock seizure, for example, the Navy undertook supervision of the company's employees and paid them by government check. As a result, the workers were declared to be federal employees and therefore not protected by the New Jersey Workmen's Compensation Act but by the Federal Employees Compensation Act. They also lost their coverage under the Social Security Act.[41]

Executive orders in the coal and railroad seizures specifically directed recognition of the right of workers to union membership and to collective bargaining with private management. The right of engaging in mutual aid was to be protected, provided activities did not interfere with the operation of the seized facilities.

Only in the coal mine seizures (except the first one in 1943) did the government sign collective bargaining agreements with the employees. These agreements were submitted to the appropriate stabilizing agency for approval; they provided customary procedures for the settlement of grievances. The authority of the government to sign a contract with organized mine foremen and supervisors was upheld when a U.S. District Court refused to grant soft coal operators an injunction on the grounds the plaintiff would suffer irreparable injury.[42]

New problems arose when private employers subsequently refused to accept government-negotiated collective bargaining agreements—such as the Krug-Lewis agreement in the 1946 coal mine seizure. Another problem was the settling of differences between the government and workers over contract interpretation. After the Krug-Lewis agreement had been in effect approximately five months, the president of the United Mine Workers demanded, on October 21, 1946, that the contract be renegotiated. The government agreed to confer with the union but contended that the basic contract could not be reopened. After fifteen days of conferences, the president of the U.M.W. declared that the contract would be terminated as of November 20.

To prevent a nationwide strike, the United States asked a federal district court for temporary injunctive relief and for a declaratory judgment as to the correct construction of the contract. The court ordered the president of the U.M.W. to rescind his unilateral statement that the Krug-Lewis agreement had expired.[43] The mine chieftain was subsequently tried and declared guilty in contempt of this order. In the face of heavy fines levied against the union and its president and the threat of additional fines if the work stoppage continued, the mine president ordered a return to work until April 1, 1947, at wages and conditions existing before the stoppage.

Upon appeal, the U.S. Supreme Court upheld the lower court by denying that the injunction was issued in violation of the Clayton and Norris-LaGuardia acts which divest federal courts of jurisdiction to issue injunctions in specified cases.[44] The court held that these cases related to private individuals or corporations but not to a sovereign government and that Congress did not intend the Norris-LaGuardia Act to apply to the government as an employer. In this case the government was exercising a sovereign function and retained ultimate control of the mines even though the government employed the private managers and the earnings and liabilities fell to the private owner during seizure.

In the opinion of one labor authority, however, the prohibitions of the Norris-LaGuardia Act did apply to the federal government, on the evidence that Congress defeated an attempt to insert into this act a section allowing the United States injunctive relief in labor dispute cases.[45] To another writer the sweeping injunction, with its prohibition against union publicity of the facts in the dispute, was an unconstitutional denial of free speech. The en-

[41] "American Economic Mobilization," 55 *Harvard Law Review* 528 ff. (1942).

[42] *The New York Times,* June 26, 1946.

[43] *Labor Relations References Manual* (Washington, D.C.: The Bureau of National Affairs, Inc., 1937-), XIX, 2059.

[44] *Ibid.,* 2346.

[45] Charles O. Gregory, "Government by Injunction Again," 14 *University of Chicago Law Review,* 364 ff. (1947).

tire action, he thought, was part of an assault on the labor movement. He also criticized the administration for urging the courts to "flout" anti-injunction acts after it had failed to urge Congress to authorize the use of injunctions at the time of the 1946 railway strike.[46]

Although the court action ended this coal strike, it is ironic from a labor relations point of view that the original question of contract interpretation remained unsettled.

The problem of the discharge of employees at government-seized properties arose in the Philadelphia Transportation Company seizure when four dismissed transit workers sought reinstatement through local court action. The court refused to order reinstatement, saying that it was the President of the United States through his representative, and not the company, who had discharged the workers. This was within the President's power in the absence of evidence showing that the action was unjustified.[47]

Although production continues at seized properties after removal of recalcitrant employees, the removal of recalcitrant workers results in reduced production or work stoppage.[48] What can be done when strikers at seized properties refuse to return to work? In federal seizures the methods used to meet this problem have included (1) use of troops, (2) withholding of awards, (3) withholding labor union rights, (4) withholding individual worker rights, and (5) legal prosecution.

Troops were first used in the North American Aviation seizure to disperse a picket line and allow willing workers to return. Seizure thus amounted to mere Army policing. While the President deplored the use of troops during a strike as "dangerous" in a democracy, he considered that this case was "not a bona fide labor dispute, but a form of alien sabotage."[49] Both the A.F.L. and C.I.O. approved this use of troops but reaffirmed the right to strike over "legitimate demands."[50]

Troops were also used in the Philadelphia Transportation Company seizure to afford protection to employees while enforcing a racial anti-discrimination edict. In the May, 1945, Chicago trucking strike the Office of Defense Transportation called for troops to protect drivers willing to work and also to serve as drivers.

There is a twofold difficulty in using troops for other than police duty. First, has the Army the skilled personnel in sufficient supply to take over the strikers' jobs? Second, are there available additional troops to perform the housekeeping functions for the strikebreakers? These problems are particularly important in wartime. Possible immobilization of a large military contingent was a fear of the administration at the time of the coal seizure in 1943.[51]

In the postwar period, seizure of the New York tugboat companies failed to bring the strikers back to work. The ODT then had to assemble all available resources (it requisitioned tugs and personnel to man them from the Army, Navy, Coast Guard, and War Shipping Administration) to supply the port with minimum essential tug service.

A second method of obtaining labor compliance was the withholding of awards. Although the strikers at the General Cable Company returned to work upon federal seizure, the government was faced with the problem of getting the workers to agree to all the provisions of the WLB ruling, particularly the denial to workers of a general wage increase, so that the Navy could relinquish control without fear of a recurring strike. Pressure was therefore put on the workers by withholding a night shift bonus awarded by the WLB. This action was effective, particularly since workers at the company's other plant nearby were receiving the bonus.[52]

A differentiation should be made between sanctions to force compliance with WLB directives and sanctions to induce strikers to return to work at government-seized properties. The War Labor Disputes Act made it a crime to induce or aid a strike at a federally operated plant, but it did not make it a crime to disregard a WLB order. Legislative sanctions

[46] Richard F. Watt, "The Divine Right of Government by Judiciary," 14 *University of Chicago Law Review*, 410-11, 453-54 (1947).
[47] *The New York Times*, Dec. 9, 1944.
[48] U.S. National War Labor Board, *Research and Statistics Report # 14, "Compliance"* (Nov. 1, 1943), p. 12.
[49] *The New York Times*, Oct. 10, 1941.
[50] *Ibid.*, July 2, 1941.
[51] *Ibid.*, May 1, 1943.
[52] *Ibid.*, Aug. 17, 1942.

dealt exclusively with getting men back to work at seized plants; administrative sanctions aimed at getting strikers back to work and at enforcement of WLB orders.

An Executive order issued August 16, 1943, provided for the enforcement of WLB directives by withholding labor union rights and by modifying draft deferments at the discretion of the economic stabilization director. Union rights were withdrawn in the case of the San Francisco machinists who refused to rescind a ban on overtime. In the most thoroughgoing sanctions ever applied to a recalcitrant union, the WLB cancelled portions of the union's contract with the employers. Those cancelled union rights included preferential hiring, vacations which might interfere with efficient production, and all contract provisions relating to action which might require agreement or consent of the union.[53] Sanctions in this case were applied against both the union and individual workers. The union finally yielded slightly by agreeing not to discipline members for nonobservance of the union overtime ban. The WLB also applied the sanction of contract revocation against a union involved in a persistent jurisdictional dispute at the United Engineering Company.[54]

Modification of draft deferments may be classed in the general category of the withdrawal of the rights of individual strikers. Except for a few isolated cases of change in draft classification this sanction was of little value. For one reason, it was unfair since not all strikers were subject to induction. At one time President Roosevelt was reported to entertain the idea of seeking congressional authority to raise the draft age limit from forty-five to sixty-five so that strikers could be pressed into noncombat military service.[55] There were additional objections from the local draft board in the Goodyear case. When asked to reclassify strikers, the chairman of the local draft board declared:

> It means placing in our hands a responsibility of another Government agency charged with solving labor's problems, and which has adequate facilities at its disposal for the settlement of strikes.
>
> Our community is torn asunder with the responsibility of neighbor being arraigned against neighbor. We should not be forced to become a strike-breaking agency.[56]

Finally, there were the sanctions provided by section 6 of the War Labor Disputes Act which provided fines and imprisonment for those who induced or aided a work stoppage at government-seized mines, plants, or facilities. While it seemed reasonable to seize a plant in case of employer recalcitrance, the wisdom of seizing a plant in the case of employee recalcitrance was widely questioned. In the words of William H. Davis, chairman of the National War Labor Board:

> When the War Labor Disputes Act was in Congress it was proposed to make it a crime by concerted actions to oppose or interfere with the orders of the Board. This would have made it a crime for a private citizen to interfere, without violence, with the business of a private employer. Therefore, the reasoning was that the plant must be made a government one before you could make it a crime to interfere with its operations. It must be made a crime against the Government, not against the private employer. . . .
>
> Where the union is at fault the seizure is made in order to make what they are doing a punishable crime.[57]

For instigating and aiding a strike against a government-seized property, thirty Philadelphia Transportation Company employees, including four discharged during Army control, were indicted on charges of violating the War Labor Disputes Act. Fines were finally imposed upon twenty-seven of the strikers, although a "special Federal prosecutor told the court that the government had been unable to ascertain who instructed the P.T.C. employees to begin the strike by reporting sick."[58] In the course of the proceedings, it was declared that although the property was lawfully seized un-

[53] National War Labor Board Order, August 19, 1944, in U.S. National Archives, *Federal Register* (U.S. Government Printing Office, 1936-), LX, 10209-210.

[54] *War Labor Reports* (Washington, D.C.: The Bureau of National Affairs, Inc., 1942-), XXIII, 678.

[55] *The New York Times*, June 24, 1943.

[56] *Ibid.*, July 4, 1945.

[57] U.S. Congress, House Select Committee to Investigate Seizure of Montgomery Ward and Company, *Investigation of the Seizure of Montgomery Ward and Company*, Hearings, 78th Cong., 2d sess., pursuant to H. Res. 521, May 22-June 8, 1944 (U.S. Government Printing Office, 1944), p. 47.

[58] *The New York Times*, Mar. 13, 1945.

der the Act of August 29, 1916, and not the War Labor Disputes Act, the sanctions of the latter act against interference with the operation of seized properties applied in the case.[59]

Although the government investigated strikes at seized properties to determine whether there were violations of section 6 of the War Labor Disputes Act, it was difficult to spot violations. The sanction of this section was therefore not used in any substantial dispute. The government realized that putting people in jail could not assure continuity in production; hence in the coal strike of 1946 reliance was put on the injunction weapon to break the strike. Even in these proceedings the criminal contempt charges were dropped at government request on the grounds that pressing the charges would not be conducive to mining coal.

Summary

IN CASES of seizure by the federal government the problem of securing adequate management personnel has been negligible since in most cases private management remained and carried on most of its customary management functions. Government seizure resulted in no transfer of ownership but partook more of a temporary receivership or trusteeship with private owners receiving the profits earned to satisfy their claims for just compensation. Operating agreements usually permitted continued property operation to the account of the private owners, a simpler and more desirable arrangement than operation to the account of the United States which necessitated the use of government funds.

Problems of government operation that were not satisfactorily solved arose (1) when only a small portion of an entire operating company was seized and (2) when enforcement of a retroactive wage award was attempted.

While WLB orders or awards were enforced during seizure, seizure did not assure ultimate acceptance of an award after government relinquishment if private management remained adamant. This was particularly true of the maintenance-of-membership awards. Retroactive wage awards were extremely hard to enforce during seizure where the government was limited to making such payments from net operating income. Another pitfall to government operation was the risk that the operation might be unprofitable.

In government-employee relationships, the Supreme Court decided that in operating seized properties the government was exercising a sovereign function and should be considered to be the employer regardless of the disposition of profits or the utilization of private management. Although the use of the injunction forced strikers to return to work, there are grave misgivings over the reintroduction of the injunction as a weapon of the federal government. Contract interpretation is an unresolved question when the government is a party to a collective bargaining agreement.

Sanctions, which had both legislative and administrative bases, were used to enforce awards and to get strikers to work for the government. They consisted of the use of troops, the withholding of awards, the withholding of labor union rights, the withholding of individual rights, and the legal prosecution of individual strike leaders. Troops were successful in dispersing picket lines but were not successful in filling strikers' jobs. Concerning legal prosecution, it was found difficult to fix responsibility for strike leadership; also, jail sentences for a few individuals would not assure continuity of production. Other minor sanctions were little used.

[59] *U.S. v. McMenamin et al.*, 58 F. Supp. 478, 479 (1944).